F. Regulatory Enforcement

As provided in the Act, section 7 of the proposed rule indicates that the requirements of the Agencies' rule would be subject to the exclusive regulatory enforcement of (1) the Federal functional regulators, with respect to the designated payment systems and participants therein that are subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act and section 5g of the Commodity Exchange Act; and (2) the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators.

III. Administrative Law Matters

A. Executive Order 12866

It has been determined that this regulation is a significant regulatory action as defined in E.O. 12866. Accordingly, this proposed regulation has been reviewed by the Office of Management and Budget. The Regulatory Assessment prepared by the Treasury for this regulation is provided below.

1. Description of Need for the Regulatory Action

The rulemaking is required by the Act, the applicable provisions of which are designed to interdict the flow of funds between gamblers and unlawful Internet gambling businesses. To accomplish this, the Act requires the Agencies, in consultation with the Attorney General, to jointly prescribe regulations requiring designated payment systems (and their participants) to establish policies and procedures that are reasonably designed to prevent or prohibit such funding flows (hereafter "unlawful Internet gambling transactions").[22]

In accordance with the Act, section 3 of the proposed rule designates five payment systems that could be used in connection with unlawful Internet gambling transactions. Sections 5 and 6 of the proposed rule require designated payment systems and participants in those payment systems to establish reasonably designed policies and procedures to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions. As required by the Act, section 4 of the proposed rule exempts certain participants in designated payment systems from the requirement to establish policies and procedures because the Agencies believe that it is not reasonably practical for those participants to prevent or prohibit unlawful Internet gambling transactions. As required by the Act, section 6 of the proposed rule also contains a "safe harbor" provision by including non-exclusive examples of policies and procedures which would be deemed to be reasonably designed to prevent or prohibit unlawful Internet gambling transactions within the meaning of the Act.

[22] 31 U.S.C. 5364.

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2. Assessment of Potential Benefits and Costs

a. Potential Benefits

Congress determined that Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.[23] Further, Congress determined that there is a need for new mechanisms for enforcing Internet gambling laws because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.[24] Sections 5 and 6 of the proposed rule address this by requiring participants in designated payment systems, which include insured depository institutions and other participants in the consumer credit industry, to establish reasonably designed policies and procedures to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions in order to stop the flow of funds to unlawful Internet gambling businesses. This funds flow interdiction is designed to inhibit the accumulation of consumer debt and to reduce debt collection problems for insured depository institutions and the consumer credit industry. Moreover, the proposed rule carries out the Act's goal of implementing new mechanisms for enforcing Internet gambling laws. The proposed rule will likely provide other benefits. Specifically, the proposed rule could restrict excesses related to unlawful Internet gambling by under-age, addicted or compulsive gamblers.

The Treasury also examined the potential benefits of the establishment by the U.S. Government of a list of entities that it determines are engaged in the business of "unlawful Internet gambling." While the Treasury understands that interest exists in such a list, we have tentatively concluded that the benefits of the list as an effective tool for use by regulated entities to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions is uncertain relative to the likely costs involved in creating such a list.

Establishing a list of unlawful Internet gambling businesses would be a time consuming process given the fact-finding and legal analysis that would be required. For example, the names of the businesses directly receiving unlawful Internet gambling payments are often not readily identifiable from their gambling websites. As a result, the Government would have to engage in fact-finding to identify the name of each unlawful Internet gambling business and its associated bank account numbers and bank. In addition, to avoid inflicting unjustified harm on lawful businesses by erroneously including them on the list, the Government would likely need to provide businesses with advance notice and a reasonable opportunity to contest their potential inclusion on the list. This process could result in a considerable lag time between the U.S. Government first identifying a gambling website and ultimately adding the name of an unlawful Internet gambling business to the list. Because it is possible for unlawful Internet

[23] 31 U.S.C. 5361(a)(3).

[24] 31 U.S.C. 5361(a)(4).

gambling businesses, particularly those located in foreign countries with foreign bank accounts, to change with relative ease the business names and bank accounts of entities directly receiving restricted transactions, the list of unlawful Internet gambling businesses could be quickly outdated and thus have limited practical utility as an effective tool for regulated entities to prevent unlawful Internet gambling transactions.

b. Potential Costs

Treasury believes that the costs of implementing the Act and the proposed rule are lower than they would be if the Act and the proposed rule were to require a prescriptive, one-size-fits-all approach with regard to regulated entities. First, both the Act and section 5 of the proposed rule provide that a financial transaction provider shall be considered to be in compliance with the regulations if it relies on and complies with the policies and procedures of the designated payment system of which it is a participant. This means that regulated entities will not be required to establish their own policies and procedures but can instead follow the policies and procedures of the designated payment system, thereby resulting in lower costs.

Second, with regard to regulated entities that establish their own policies and procedures, both the Act and sections 5 and 6 of the proposed rule provide maximum flexibility. Specifically, neither the Act nor the proposed rule contain specific performance standards but instead require that such policies and procedures be "reasonably designed" to identify and block or otherwise prevent or prohibit unlawful internet gambling. In addition, the proposed rule expressly authorizes each regulated entity to use policies and procedures that are "specific to its business" which will enable it to efficiently tailor its policies and procedures to its needs. Because the Act and the proposed rule provide flexibility for regulated entities in crafting their policies and procedures, allowing them to tailor their policies and procedures to their individual circumstances, the costs imposed by the Act on regulated entities should be lower than if the Act and the proposed rule were to take a prescriptive one-size-fits-all approach.

Third, the "safe harbor" provision, with its nonexclusive examples of policies and procedures deemed to be "reasonably designed," provides regulated entities with specific guidance on how to structure the policies and procedures required by the Act. As a result, costs associated with formulating policies and procedures should be lower because the safe harbor provision provides guidance on how to so structure the policies and procedures.

Because the Treasury does not have sufficient information to quantify reliably the costs of developing specific policies and procedures, the Treasury seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule. Moreover, the Treasury anticipates that the Agencies will contact trade groups representing participants, particularly those that qualify as small entities, and encourage them to provide comments during the comment period to ascertain, among other things, the costs imposed by this rulemaking.

Once the policies and procedures have been developed, however, the Treasury believes the burden of this rulemaking will be relatively low. It is estimated that the recordkeeping requirement required by the Act and the proposed rule will take approximately one hour per recordkeeper per year to maintain the policies and procedures required by this rulemaking. It is estimated that the total annual cost to regulated entities to maintain the policies and procedures will be approximately $4 million.[25]

The Treasury also considered the potential costs to the U.S. Government of establishing a list of unlawful Internet gambling businesses, and has initially determined that such costs would likely be significant. This is because establishing a list would require considerable fact-finding and legal analysis once the U.S. Government identifies a gambling website. The Government must engage in an extensive legal analysis to determine whether the gambling website is used, at least in part, to place, receive or otherwise knowingly transmit unlawful bets or wagers. This legal analysis would entail interpreting the various Federal and State gambling laws, which could be complicated by the fact that the legality of a particular Internet gambling transaction might change depending on the location of the gambler at the time the transaction was initiated and the location where the bet or wager was received. The U.S. Government would at the same time also need to identify the business name and the bank account number and bank of the entity directly receiving payments on behalf of the Internet gambling business, which is often not readily ascertainable from the website. Identifying the business name and bank account number of the entity directly receiving unlawful Internet gambling payments might be challenging, especially where the Internet gambling business is located in and maintains its bank accounts in a foreign country. Once the fact-finding and legal analysis are concluded successfully, the U.S. Government might then need to afford the business advance notice and an opportunity to object to its potential inclusion on the list in order to ensure that lawful businesses are not harmed by being erroneously included on the list. These due process safeguards would result in considerable added costs to the U.S. Government.

2. Interference with State, Local, and Tribal Governments

The Act does not alter State, local or tribal gaming law.[26] In addition, the Act exempts from the definition of the term "unlawful Internet gambling," intrastate, intratribal, and intertribal gambling transactions.[27] Because the proposed rule does not alter these defined terms, it avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

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[25] This estimate is based on an estimate of 270,721 recordkeepers. The hourly cost of the person who would be responsible for maintaining the policies and procedures is estimated to be $14.60 per hour (based on the U.S. Department of Labor, Bureau of Labor Statistics' occupational employment statistics for office and administrative support occupations, dated May 2006).

[26] Specifically, the Act defines the term "unlawful Internet gambling" as a bet or wager, which involves at least in part the use of the Internet, where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. 31 U.S.C. 5362(10)(A).

[27] 31 U.S.C. 5362(10)(B) and (C).

B. Regulatory Flexibility Act Analysis

Congress enacted the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) to address concerns related to the effects of agency rules on small entities and the Agencies are sensitive to the impact their rules may impose on small entities. In this case, the Agencies believe that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The Act mandates that the Agencies jointly prescribe regulations requiring designated payment systems, and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of reasonably designed policies and procedures. Comments are requested on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the Act itself, and not the proposed rule.

The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Agencies have reviewed the proposed regulation. While the Agencies believe that the proposed rule likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)), the Agencies do not have complete data at this time to make this determination. Therefore, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. The Agencies will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Statement of the need for, objectives of, and legal basis for, the proposed rule.

The Agencies are proposing a regulation to implement the Act, as required by the Act. The Act prohibits any person in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Section 802 of the Act (codified at 31 U.S.C. 5361 et seq.) requires the Agencies jointly (in consultation with the Attorney General) to designate payment systems that could be used in connection with, or to facilitate, restricted transactions and to prescribe regulations requiring designated payment systems, and financial transaction providers participating in each designated payment system, to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The proposed regulation sets out necessary definitions, designates payment systems that could be used in connection with restricted transactions, exempts participants providing certain functions in designated payment systems from certain requirements imposed by the regulation, provides nonexclusive examples of policies and procedures reasonably designed to identify and block, or otherwise prevent and prohibit, restricted transactions, and reiterates the enforcement regime set out in the Act for designated payment systems and non-exempt participants therein. The Agencies believe that the proposed regulation implements Congress's requirement that the Agencies prescribe regulations that carry out the purposes of the Act.

2. Small entities affected by the proposed rule

The proposed rule would affect non-exempt financial transaction providers participating in the designated payment systems, regardless of size. The Agencies estimate that 4,792 small banks (out of a total of 8,192 banks), 420 small savings associations (out of a total of 838), 7,609 small credit unions (out of a total of 8,477), and 240,547 small money transmitting businesses (out of a total of 253,208) would be affected by this proposed rule. Pursuant to regulations issued by the Small Business Administration (13 CFR 121-201), a "small entity" includes a commercial bank, savings association or credit union with assets of $165 million or less. For money transmitting businesses, a "small entity" would include those with assets of $6.5 million or less. The Agencies propose that the requirements in this rule be applicable to all entities subject to the Act, as implemented, regardless of their size because an exemption for small entities would significantly diminish the usefulness of the policies and procedures required by the Act by permitting unlawful Internet gambling operations to evade the requirements by using small financial transaction providers. The Agencies anticipate, however, that, as provided in the Act and the proposed regulations, small non-exempt participants in some designated payment systems, to a large extent, should be able to rely on policies and procedures established and implemented by the designated payment systems of which they are participants or other existing systems. The Agencies seek information and comment on the number of small entities to which the proposed rule would apply.

3. Projected reporting, recordkeeping, and other compliance requirements

Section 802 of the Act requires the Agencies to prescribe regulations requiring each designated payment system, and all financial transaction providers participating in the designated payment system, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions. The proposed rule implements this requirement by requiring all non-exempt participants in designated payment systems to establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. Because the Agencies do not have sufficient information to quantify reliably the effects the Act and the proposed rule would have on small entities, the Agencies seek information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule and the extent to which those costs, requirements, or changes are in addition to or different from those arising from the application of the Act generally. Moreover, the Agencies anticipate contacting trade groups representing participants that qualify as small entities and encouraging them to provide comments during the comment period to ascertain, among other things, the costs imposed on regulated small entities.

4. Identification of duplicative, overlapping, or conflicting Federal rules

The Agencies have not identified any Federal rules that duplicate, overlap, or conflict with the proposed rule. The Agencies seek comment regarding any statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

5. Significant alternatives to the proposed rule

Other than as noted above, the Agencies are unaware of any significant alternatives to the proposed rule that accomplish the stated objectives of the Act and that minimize any significant economic impact of the proposed rule on small entities. The Agencies request comment on additional ways to reduce regulatory burden associated with this proposed rule.

C. Paperwork Reduction Act Analysis

The collection of information requirement contained in this notice of joint proposed rulemaking has been submitted by the Agencies to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury and the Board of Governors of the Federal Reserve System, Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to Treasury's Office of Critical Infrastructure Protection and Compliance Policy and the Board's Secretary at the addresses previously specified. Because OMB must complete its review of the collection of information between 30 and 60 days after publication, comments on the information collection should be submitted not later than [insert 30 days from date of publication]. Comments are specifically requested concerning:

(1) Whether the proposed information collection is necessary for the proper performance of Agency functions, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information (see below);

(3) How to enhance the quality, utility, and clarity of the information required to be maintained;

(4) How to minimize the burden of complying with the proposed information collection, including the application of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The collection of information in the proposed rule is in sections 5 and 6. This information is required by section 802 of the Act, which requires the Agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions. The proposed rule implements this requirement by requiring all non-exempt participants in designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The proposed rule does not include a specific time period for record retention, however, non-exempt participants would be required to maintain the policies and procedures for a particular designated payment system as long as they participate in that system.

The Agencies anticipate that, as provided in the Act and the proposed regulations, small non-exempt participants in designated payment systems, for the most part, should be able to rely on policies and procedures established and implemented by the designated payment systems of which they are participants. For example, certain money transmitting business operators may have their own centralized procedures to prevent unlawful gambling transactions. Small money transmitters, acting as agents in these large systems, may be able to rely on the system's policies, and therefore would not have to create their own.

Many of the payment systems used by depository institutions, such as check clearing, do not have centralized system operators. Therefore, depository institutions would likely have to create their own policies for check clearing.

The likely recordkeepers are businesses or other for-profits and not-for-profit institutions and include commercial banks, savings associations, credit unions, card servicers, and money transmitting businesses. The Agencies have agreed to split equally for burden calculations the total number of recordkeepers not subject to examination and supervision by either the Board or the Treasury's Office of the Comptroller of the Currency and Office of Thrift Supervision.

Board:
Estimated number of recordkeepers: 134,451.
Estimated average annual burden hours per recordkeeper: 25 hours for depository institutions and card servicers, 1 hour for money transmitting businesses.
Estimated frequency: annually.
Estimated total annual recordkeeping burden: 322,779 hours.

Treasury:
Estimated number of recordkeepers: 136,270.
Estimated average annual burden hours per recordkeeper: 25 hours for depository institutions and card servicers, 1 hour for money transmitting businesses.
Estimated frequency: annually.

Estimated total annual recordkeeping burden: 368,254 hours.

The initial burden is imposed by the Act which requires non-exempt participants to establish policies and procedures. The Agencies estimate that this initial burden will average 24 hours per recordkeeper for depository institutions and card servicers. The Agencies also estimate that the annual burden of maintaining the policies and procedures once they are established will be 1 hour per recordkeeper. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

D. Plain Language

Each Federal banking agency, such as the Board, is required to use plain language in all proposed and final rulemakings published after January 1, 2000. 12 U.S.C. 4809. In addition, in 1998, the President issued a memorandum directing each agency in the Executive branch, such as Treasury, to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The Agencies have sought to present the proposed rule, to the extent possible, in a simple and straightforward manner. The Agencies invite comment on whether there are additional steps that could be taken to make the proposed rule easier to understand, such as with respect to the organization of the materials or the clarity of the presentation.

IV. Statutory Authority

Pursuant to the authority set out in the Act and particularly section 802 (codified at 31 U.S.C. 5361 et seq.), the Board and the Treasury jointly propose the common rules set out below.

V. Text of Proposed Rules

List of Subjects

12 CFR Part 233
[Banks, Banking, Electronic Funds Transfers, Incorporation by Reference, Internet Gambling, Payments, Recordkeeping]

31 CFR Part 132
[Banks, Banking, Electronic Funds Transfers, Incorporation by Reference, Internet Gambling, Payments, Recordkeeping]

Federal Reserve System
Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Title 12, Chapter II of the Code of Federal Regulations by adding a new part 233 as set forth under Common Rules at the end of this document:

PART 233 - PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING (REGULATION GG)

Sec.

233.1 Authority, Purpose, and Incorporation by Reference.

233.2 Definitions.

233.3 Designated Payment Systems.

233.4 Exemptions.

233.5 Processing of Restricted Transactions Prohibited.

233.6 Policies and Procedures.

233.7 Regulatory Enforcement.

Authority: 31 U.S.C. 5364.

Department of the Treasury
Authority and Issuance

For the reasons set forth in the preamble, Treasury proposes to amend Title 31, Chapter I of the Code of Federal Regulations by adding a new part 132 as set forth under Common Rules at the end of this document:

PART 132 - PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

Sec.

132.1 Authority, Purpose, and Incorporation by Reference.

132.2 Definitions.

132.3 Designated Payment Systems.

132.4 Exemptions.

132.5 Processing of Restricted Transactions Prohibited.

132.6 Policies and Procedures.

132.7 Regulatory Enforcement.

Authority: 31 U.S.C. 321 and 5364.

Common Rules

The common rules that are proposed to be adopted by the Board as part 233 of Title 12, Chapter II of the Code of Federal Regulations and by Treasury as part 132 of Title 31, Chapter I of the Code of Federal Regulations follow:

§__.1 Authority, Purpose, and Incorporation by Reference.

(a) Authority. This part is issued jointly by the Board of Governors of the Federal Reserve System (Board) and the Secretary of the Department of the Treasury (Treasury) under section 802 of the Unlawful Internet Gambling Enforcement Act of 2006 (Act) (enacted as Title VIII of the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884, and codified at 31 U.S.C. 5361 - 5367).

(b) Purpose. The purpose of this part is to issue implementing regulations as required by the Act. The part sets out necessary definitions, designates payment systems subject to the requirements of this part, exempts certain participants in designated payment systems from certain requirements of this part, provides nonexclusive examples of policies and procedures reasonably designed to identify and block, or otherwise prevent and prohibit, restricted transactions, and sets out the Federal entities that have exclusive regulatory enforcement authority with respect to the designated payments systems and non-exempt participants therein.

(c) Incorporation by reference—relevant definitions from ACH rules.

(1) This part incorporates by reference the relevant definitions of ACH terms as published in the "2007 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network" (the "ACH Rules"). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the "2007 ACH Rules" are available from the National Automated Clearing House Association, Suite 100, 13450 Sunrise Valley Drive, Herndon, Virginia 20171 (703/561-1100). Copies also are available for public inspection at the Department of Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220, and the National Archives and Records Administration (NARA). Before visiting the Treasury library, you must call (202) 622-0990 for an appointment. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html 20002.

(2) Any amendment to definitions of the relevant ACH terms in the ACH Rules shall not apply to this part unless the Treasury and the Board jointly accept such amendment by publishing notice of acceptance of the amendment to this part in the Federal Register. An amendment to the definition of a relevant ACH term in the ACH Rules that is accepted by the Treasury and the Board shall apply to this part on the effective date of the rulemaking specified by the Treasury and the Board in the joint Federal Register notice expressly accepting such amendment.

§__.2 Definitions.

(a) Automated clearing house system or ACH system means a funds transfer system, primarily governed by the ACH Rules, which provides for the clearing and settlement of batched electronic entries for participating financial institutions. When referring to ACH systems, the terms in this regulation (such as "originating depository financial institution," "operator," "originating gateway operator," "receiving depository financial institution," "receiving gateway operator," and "third-party sender") are defined as those terms are defined in the ACH Rules.

(b) Bet or wager

(1) Means the staking or risking by any person of something of value upon the outcome or a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

(2) Includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(3) Includes any scheme of a type described in 28 U.S.C. 3702;

(4) Includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service); and

(5) Does not include –

(i) Any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that act (15 U.S.C. 78c(a)(10));

(ii) Any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(iii) Any over-the-counter derivative instrument;

(iv) Any other transaction that—

(A) Is excluded or exempt from regulation under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(B) Is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act (7 U.S.C. 16(e)) or section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a));

(v) Any contract of indemnity or guarantee;

(vi) Any contract for insurance;

(vii) Any deposit or other transaction with an insured depository institution;

(viii) Participation in any game or contest in which participants do not stake or risk anything of value other than—

(A) Personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

(B) Points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or

(ix) Participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership or an actual team that is a member of an amateur or professional sports organization (as those terms are defined in 28 U.S.C. 3701) and that meets the following conditions:

(A) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(B) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(C) No winning outcome is based—

(1) On the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams, or

(2) Solely on any single performance of an individual athlete in any single real-world sporting or other event.

(c) Card issuer means any person who issues a credit card, debit card, pre-paid card, or stored value product, or the agent of such person with respect to such card or product.

(d) Card system means a system for clearing and settling transactions in which credit cards, debit cards, pre-paid cards, or stored value products, issued or authorized by the operator of the system, are used to purchase goods or services or to obtain a cash advance.

(e) Check clearing house means an association of banks or other payors that regularly exchange checks for collection or return.

(f) Check collection system means an interbank system for collecting, presenting, returning, and settling checks or intrabank system for settling checks deposited in and drawn on the same bank. When referring to check collection systems, the terms in this regulation (such as "paying bank," "collecting bank," "depositary bank," "returning bank," and "check") are defined as those terms are defined in 12 CFR 229.2. For purposes of this part, "check" also includes an electronic representation of a check that a bank agrees to handle as a check.

(g) Consumer means a natural person.

(h) Designated payment system means a system listed in §__.3.

(i) Electronic fund transfer has the same meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that such term includes transfers that would otherwise be excluded under section 903(6)(E) of that act (15 U.S.C. 1693a(6)(E)), and includes any funds transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(j) Financial institution means a State or national bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds an account belonging to a consumer. The term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(k) Financial transaction provider means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

(l) Interactive computer service means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(m) Internet means the international computer network of interoperable packet switched data networks.

(n) Intrastate transaction means placing, receiving, or otherwise transmitting a bet or wager where -

(1) The bet or wager is initiated and received or otherwise made exclusively within a single State;

(2) The bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include –

(i) Age and location verification requirements reasonably designed to block access to minors and person located out of such State; and

(ii) Appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and

(3) The bet or wager does not violate any provision of –

(i) The Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

(ii) 28 U.S.C. chapter 178 (professional and amateur sports protection);

(iii) The Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

(iv) The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(o) Intratribal transaction means placing, receiving or otherwise transmitting a bet or wager where –

(1) The bet or wager is initiated and received or otherwise made exclusively –

(i) Within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act (25 U.S.C. 2703)); or

(ii) Between the Indian lands of two or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.);

(2) The bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of –

(i) The applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(ii) With respect to class III gaming, the applicable Tribal-State compact;

(3) The applicable tribal ordinance or resolution or Tribal-State compact includes –

(i) Age and location verification requirements reasonably designed to block access to minors and person located out of the applicable Tribal lands; and

(ii) Appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(4) The bet or wager does not violate any provision of –

(i) The Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

(ii) 28 U.S.C. chapter 178 (professional and amateur sports protection);

(iii) The Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

(iv) The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(p) Money transmitting business and money transmitting service have the meanings given the terms in 31 U.S.C. 5330(d) (determined without regard to any regulations prescribed by the Secretary of the Treasury thereunder).

(q) Participant in a designated payment system means an operator of a designated payment system, or a financial transaction provider that is a member of or, has contracted for financial transaction services with, or is otherwise participating in, a designated payment system. This term does not include a customer of the financial transaction provider if the customer is not a financial transaction provider otherwise participating in the designated payment system on its own behalf.

(r) Restricted transaction means any of the following transactions or transmittals involving any credit, funds, instrument, or proceeds that the Act prohibits any person engaged in the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service) from knowingly accepting, in connection with the participation of another person in unlawful Internet gambling –

(1) Credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) An electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person; or

(3) Any check, draft, or similar instrument that is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution.

(s) State means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States, including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

(t) Unlawful Internet gambling means to place, receive, or otherwise knowingly transmit a bet or wager by any means that involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The term does not include placing, receiving, or otherwise transmitting a bet or wager that is excluded from the definition of this term by the Act as an intrastate transaction or an intra-tribal transaction, and does not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.). The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

(u) Wire transfer system means a system through which an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt, or on a day stated in the order, is transmitted by electronic or other means through the network, between banks, or on the books of a bank. When referring to wire transfer systems, the terms in this regulation (such as "bank," "originator's bank," "beneficiary's bank," and "intermediary bank") are defined as those terms are defined in 12 CFR part 210, appendix B.

§__.3 **Designated Payment Systems.** The following payment systems could be used

by participants in connection with, or to facilitate, a restricted transaction:
(a) Automated clearing house systems;
(b) Card systems;
(c) Check collection systems;
(d) Money transmitting businesses; and
(e) Wire transfer systems.

§__.4 Exemptions.

(a) Automated clearing house systems. The participants providing the following functions of an automated clearing house system with respect to a particular ACH transaction are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions –

(1) The ACH system operator, except as provided in §___.6(b)(2) and §___.6(b)(3);

(2) The originating depository financial institution in an ACH credit transaction; and

(3) The receiving depository financial institution in an ACH debit transaction.

(b) Check collection systems. The participants providing the following functions of a check collection system with respect to a particular check transaction are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions —

(1) A check clearing house; and

(2) The paying bank (unless it is also the depositary bank), any collecting bank (other than the depositary bank), and any returning bank.

(c) Wire transfer systems. The participants providing the following functions of a wire transfer system with respect to a particular wire transfer are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions—

(1) The operator of a wire transfer network; and

(2) The originator's bank and any intermediary bank, except as provided in §___.6(f)(2).

§__.5 Processing of Restricted Transactions Prohibited.

(a) All non-exempt participants in designated payment systems shall establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.

(b) A non-exempt financial transaction provider participant in a designated payment system shall be considered to be in compliance with the requirements of paragraph (a) of this section if it –

(1) Relies on and complies with the written policies and procedures of the designated payment system that are reasonably designed to –

(i) Identify and block restricted transactions; or

(ii) Otherwise prevent or prohibit the acceptance of the products or services of the designated payment system or participant in connection with restricted transactions; and

(2) Such policies and procedures of the designated payment system comply with the requirements of this part.

(c) As provided in the Act, a person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction, shall not be liable to any party for such action if –

(1) The transaction is a restricted transaction;

(2) Such person reasonably believes the transaction to be a restricted transaction; or

(3) The person is a participant in a designated payment system and blocks or otherwise prevents the transaction in reliance on the policies and procedures of the designated payment system in an effort to comply with this regulation.

(d) Nothing in this regulation requires or is intended to suggest that designated payment systems or participants therein must or should block or otherwise prevent or prohibit any transaction in connection with any activity that is excluded from the definition of "unlawful Internet gambling" in the Act as an intrastate transaction, an intratribal transaction, or a transaction in connection with any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

(e) Nothing in this regulation modifies any requirement imposed on a participant by other applicable law or regulation to file a suspicious activity report to the appropriate authorities.

§__.6 Policies and Procedures.

(a) The examples of policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions set out in this section are non-exclusive. In establishing and implementing written policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions, a non-exempt participant in a designated payment system may design and use other policies and procedures that are specific to its business and may use different policies and procedures with respect to different types of restricted transactions.

(b) Automated clearing house system examples.

(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the policies and procedures of the originating depository financial institution and any third-party sender in an ACH debit transaction, and the receiving depository financial institution in an ACH credit transaction, are deemed to be reasonably designed to prevent or prohibit restricted transactions if they —

(i) Address methods for conducting due diligence in establishing or maintaining a customer relationship designed to ensure that the customer will not originate restricted transactions as ACH debit transactions or receive restricted transactions as ACH credit transactions through the customer relationship, such as –

(A) Screening potential commercial customers to ascertain the nature of their business; and

(B) Including as a term of the commercial customer agreement that the customer may not engage in restricted transactions; and

(ii) Include procedures to be followed with respect to a customer if the originating depository financial institution or third-party sender becomes aware that the customer has originated restricted transactions as ACH debit transactions or if the receiving depository financial institution becomes aware that the customer has received restricted transactions as ACH credit transactions, such as procedures that address –

(A) When fines should be imposed;

(B) When the customer should not be allowed to originate ACH debit transactions; and

(C) The circumstances under which the account should be closed.

(2) The policies and procedures of a receiving gateway operator and third-party sender that receives instructions to originate an ACH debit transaction directly from a foreign sender (which could include a foreign bank, a foreign third-

party processor, or a foreign originating gateway operator) are deemed to be reasonably designed to prevent or prohibit restricted transactions if they –

(i) Address methods for conducting due diligence in establishing or maintaining the relationship with the foreign sender designed to ensure that the foreign sender will not send instructions to originate ACH debit transactions representing restricted transactions to the receiving gateway operator or third-party sender, such as including as a term in its agreement with the foreign sender requiring the foreign sender to have reasonably designed policies and procedures in place to ensure that the relationship will not be used to process restricted transactions; and

(ii) Include procedures to be followed with respect to a foreign sender that is found to have sent instructions to originate ACH debit transactions to the receiving gateway operator or third-party sender that are restricted transactions, which may address –

(A) When ACH services to the foreign sender should be denied; and

(B) The circumstances under which the cross-border arrangements with the foreign sender should be terminated.

(3) The policies and procedures of an originating gateway operator that receives an ACH credit transaction containing instructions to send or credit a transaction to a foreign bank directly or through a foreign receiving gateway operator are deemed to be reasonably designed to prevent or prohibit restricted transactions, if they include procedures to be followed with respect to a foreign bank that is found to have received from the originating gateway operator either directly or indirectly transactions that are restricted transactions, which may address –

(i) When ACH credit transactions for the foreign bank or through the foreign gateway operator should be denied; and

(ii) The circumstances under which the cross-border arrangements with the foreign bank should be terminated.

(c) Card system examples. The policies and procedures of a card system operator, a merchant acquirer, and a card issuer, are deemed to be reasonably designed to prevent or prohibit restricted transactions, if they –

(1) Address methods for conducting due diligence in establishing or maintaining a merchant relationship designed to ensure that the merchant will not receive restricted transactions through the card system, such as –

(i) Screening potential merchant customers to ascertain the nature of their business; and

(ii) Including as a term of the merchant customer agreement that the merchant may not receive restricted transactions through the card system;

(2) Include procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions, such as –

(i) Establishing transaction codes and merchant/business category codes that are required to accompany the authorization request for a transaction and creating the operational functionality to enable the card system or the card issuer to identify and deny authorization for a restricted transaction;

(ii) Ongoing monitoring or testing to detect potential restricted transactions, including –

(A) Conducting testing to ascertain whether transaction authorization requests are coded correctly;

(B) Monitoring of web sites to detect unauthorized use of the relevant card system, including its trademark; or

(C) Monitoring and analyzing payment patterns to detect suspicious payment volumes from a merchant customer; and

(3) Include procedures to be followed with respect to a merchant customer if the card system, card issuer, or merchant acquirer becomes aware that a merchant has received restricted transactions through the card system, such as --

(i) When fines should be imposed; and

(ii) When access to the card system should be denied.

(d) Check collection system examples.

(1) Except as provided in paragraph (d)(2) of this section, the policies and procedures of a depositary bank are deemed to be reasonably designed to prevent or prohibit restricted transactions if they —

(i) Address methods for conducting due diligence in establishing or maintaining a customer relationship designed to ensure that the customer will not receive restricted transactions through the customer relationship, such as –

(A) Screening potential commercial customers to ascertain the nature of their business; and

(B) Including as a term of the commercial customer agreement that the customer may not deposit checks that constitute restricted transactions; and

(ii) Include procedures to be followed with respect to a customer if the depositary bank becomes aware that the customer has deposited checks that are restricted transactions, such as procedures that address –

(A) When checks for deposit should be refused; and

(B) The circumstances under which the account should be closed.

(2) The policies and procedures of a depositary bank that receives a check for collection directly from a foreign bank are deemed to be reasonably designed to prevent or prohibit restricted transactions if they –

(i) Address methods for conducting due diligence in establishing or maintaining the correspondent relationship with the foreign bank designed to ensure that the foreign bank will not send checks representing restricted transactions to the depositary bank for collection, such as including as a term in its agreement with the foreign bank requiring the foreign bank to have reasonably designed policies and procedures in place to ensure that the correspondent relationship will not be used to process restricted transactions; and

(ii) Include procedures to be followed with respect to a foreign bank that is found to have sent checks to the depositary bank that are restricted transactions, which may address –

(A) When check collection services for the foreign bank should be denied; and

(B) The circumstances under which the correspondent account should be closed.

(e) Money transmitting business examples. The policies and procedures of a money transmitting business are deemed to be reasonably designed to prevent or prohibit restricted transactions if they –

(1) Address methods for conducting due diligence in establishing or maintaining commercial subscriber relationships designed to ensure that the commercial subscriber will not receive restricted transactions through the money transmitting business, such as -

(i) Screening potential commercial subscribers to ascertain the nature of their business; and

(ii) Including as a term of the commercial subscriber agreement that the subscriber may not receive restricted transactions; and

(2) Include procedures regarding ongoing monitoring or testing to detect potential restricted transactions, such as –

(i) Monitoring and analyzing payment patterns to detect suspicious payment volumes to any recipient; or

(ii) Monitoring web sites to detect unauthorized use of the relevant money transmitting business, including their trademarks; and

(3) Include procedures to be followed with respect to recipients that are found to have engaged in restricted transactions, that address –

(i) When fines should be imposed;

(ii) When access should be denied; and

(iii) The circumstances under which an account should be closed.

(f) Wire transfer system examples.

(1) The policies and procedures of the beneficiary's bank in a wire transfer are deemed to be reasonably designed to prevent or prohibit restricted transactions if they –

(i) Address methods for conducting due diligence in establishing or maintaining a commercial customer relationship designed to ensure that the commercial customer will not receive restricted transactions through the customer relationship, such as -

(A) Screening potential commercial customers to ascertain the nature of their business; and

(B) Including as a term of the commercial customer agreement that the customer may not receive restricted transactions.

(ii) Include procedures to be followed with respect to a commercial customer if the beneficiary's bank becomes aware that the commercial customer has received restricted transactions, such as procedures that address –

(A) When access to the wire transfer system should be denied; and

(B) The circumstances under which an account should be closed.

(2) An originator's bank or intermediary bank that sends or credits a wire transfer transaction directly to a foreign bank is deemed to have policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit restricted transactions, if the policies and procedures include procedures to be followed with respect to a foreign bank that is found to have received from the originator's bank or intermediary bank wire transfers that are restricted transactions, which may address –

(i) When wire transfer services for the foreign bank should be denied; and

(ii) The circumstances under which the correspondent account should be closed.

§__.7 **Regulatory Enforcement.** The requirements under this regulation are subject to the exclusive regulatory enforcement of –

(a) The Federal functional regulators, with respect to the designated payment systems and participants therein that are subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) and section 5g of the Commodity Exchange Act (7 U.S.C. 7b-2) ; and

(b) The Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (a) of this section.

[THIS SIGNATURE PAGE PERTAINS TO THE NOTICE TITLED, "PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING"]

By order of the Board of Governors of the Federal Reserve System, October 1, 2007.

Jennifer J. Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board.

[THIS SIGNATURE PAGE PERTAINS TO THE NOTICE TITLED, "PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING"]

Dated: October 1, 2007

By the Department of the Treasury.

Valerie A. Abend (signed)
Valerie A. Abend
Deputy Assistant Secretary for Critical Infrastructure Protection and Compliance Policy.